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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,391	12/05/2000	Victor Robert Abate	839-779	9250

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EXAMINER

STIMPAK, JOHNNA

ART UNIT PAPER NUMBER

3623

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/731,391

Applicant(s)

ABATE ET AL.

Examiner

Johnna R Stimpak

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on December 5, 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The following is a first office action upon examination of application number 09/731,391. Claims 1-15 are pending and have been examined on the merits discussed below.

#### ***Claim Rejections - 35 USC §101***

2. Claims 1-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-15 only recite an abstract idea. The recited steps of merely obtaining data at process milestones and comparing data to determine status does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to select an insurance policy over another.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces an identification of process status such as on time delivery or ahead or behind schedule and displays it (i.e., repeatable, useful and tangible).

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 1-15 are deemed to be directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1-3, 5, 8 and 10** are rejected under 35 U.S.C. 102(a and e) as being anticipated by **Page et al, US 6,212,549**.

As per **claim 1**, Page et al teaches (a) setting control points corresponding to process milestones for product units from product order to product delivery and points in between (column 13, lines 29-44 – trackpoints are set up to monitor items delivered and a warning is generated if the number received falls short of expectation); (b) comparing a cumulative product unit demand versus and actual number of cumulative product unit completions to determine

Art Unit: 3623

whether execution flow is ahead or behind at each of the control points (column 13, lines 29-44 – trackpoints are set up to monitor items delivered and a warning is generated if the number received falls short of expectation; column 8, lines 60-67 and 9, lines 6-10 – trackpoints set up to monitor attributes to track information relating to trackable item, trackpoint can monitor status such as on schedule, behind schedule, not started, etc.); (c) determining a delivery variance for individual product units based on product unit delivery timing (column 13, lines 29-44 – trackpoints are set up to monitor items delivered and a warning is generated if the number received falls short of expectation); and (d) identifying potential capacity shortages at each control point according to line rate analyses based on product units per week (column 9, lines 18-26 – notification or warning can be sent if conditions are met such as if the actual number of items received is smaller than expected, inherently this identifies a capacity shortage).

As per **claim 2**, Page et al teaches (e) maintaining a quality metric for each of the control points (column 9, lines 6-10 a metric is set up to determine status such as on schedule, behind schedule, ahead of schedule, etc.).

As per **claim 3**, Page et al teaches displaying a summary of all metrics for each of the control points on a single page (fig 4 shows the summary of the trackpoint monitoring orders to a contractor showing status (on schedule, behind, etc.) along with amount orders versus amount completed).

As per **claim 5**, teaches determining an aggregate performance for each of the process functions (fig. 4 – reference no. 406 shows trends with respect to different trackpoints and shows overall performance of the task (column 9, lines 18-35)).

As per **claim 8**, Page et al teaches providing trend data corresponding to information from steps (b) – (d) (column 9, lines 18-35 – trend data can be examined using a history of values of each attribute).

As per **claim 10**, Page et al teaches providing an alerting function for information from steps (b) – (d) that indicates the respective product unit is falling behind schedule (column 9, lines 55-64 – an activator code is set up so that if a value meets a certain criteria, some predefined action takes place, i.e., if the number completed falls short of the number expected the user is alerted that the project is behind schedule).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 4, 6, 7, 9 and 11-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Page et al, US 6,212,549**.

As per **claim 4**, Page et al does not explicitly teach the displaying step comprises compiling data from steps (b) – (d) into data matrices for each of the control points, arranging the data metrics in columns according to functional ownership of respective process functions, and arranging the columns chronologically according to the order fulfillment process sequence. Page et al teaches collecting data corresponding to several control points (i.e., status such as on-time or whether required order amounts have been met). Official notice is taken that it would have

Art Unit: 3623

been obvious to one of ordinary skill in the art at the time of the invention to compile and organize the control point (trackpoint) data of Page et al into a matrix since it is old and well known that the use of a matrix offers a summarized view of data for quicker and more efficient evaluation.

As per **claim 6**, Page et al teaches maintaining a history of values for each attribute to allow examination of trends but does not explicitly teach displaying the aggregate performance for each of the process functions at a position adjacent its respective column. Official notice is taken that it would have been to one of ordinary skill in the art at the time of the invention to compile and organize the control point (trackpoint) data of Page et al into a matrix since it is old and well known that the use of a matrix offers a summarized view of data for quicker and more efficient evaluation of trends.

As per **claim 7**, Page et al teaches color-coding portions of the display to provide an alerting function based on poor aggregate performance (column 7, lines 2-7 – presentation techniques are used such as graphs, warning lights, gauges, etc.).

As per **claim 9**, Page et al teaches maintaining a history of values for each attribute to allow examination of trends but does not explicitly teach providing trend data comprises providing data relating to the order fulfillment process thirty days ago, today and thirty days ahead. Official notice is taken that it would have been obvious to one of ordinary skill in the art at the time of the invention to set time periods to examine data trends. It is well known in the art of examining trends of data that one would set forth time frames wherein data from specific time periods is examined to compare to current data. For example it is common to examine data on a monthly basis and also to forecast ahead to the current month. One would compare today's

Art Unit: 3623

production, for example, to production rates the previous month before. The examination of data trends at specific time periods gives the user a better comparison thereby making the evaluation system more efficient.

As per **claim 11**, Page et al teaches step (c) is practiced by determining how many product units are currently late for each of the control points (column 9, lines 6-10 – determination is made whether the product is on schedule or behind schedule) but does not explicitly teach determining an average variation, a standard deviation of variation, an a maximum variation for each of the control points. Official notice is taken that it would have been obvious to one of ordinary skill in the art to perform such calculations since it is well known in the art of data analysis to determine variation of data from trends. Performing such calculations gives more insight to determine where production may be falling behind regularly or how efficient the production is.

As per **claim 12**, Page et al teaches flagging late product units (column 9, lines 55-64 – an activator code is set up so that if a value meets a certain criteria, some predefined action takes place, i.e., if the number completed falls short of the number expected the user is alerted that the project is behind schedule).

As per **claim 13**, Page et al teaches determining whether production is on schedule or behind schedule but does not explicitly teaches step (d) is practiced by comparing an average number of product units per week that are required to stay on schedule with an average number of completed product units per week in the last thirty days, and determining a number of product units per week that will be required in the next thirty days. Official notice is taken that it would have been obvious to one of ordinary skill in the art at the time of the invention to set time



Art Unit: 3623

periods to examine data trends. It is well known in the art of examining trends of data that one would set forth time frames wherein data from specific time periods is examined to compare to current data. For example it is common to examine data on a monthly basis and also to forecast ahead to the current month. One would compare today's production, for example, to production rates the previous month before. The examination of data trends at specific time periods gives the user a better comparison thereby making the evaluation system more efficient.

As per **claim 14**, Page et al does not explicitly teach step (d) is further practiced by determining a line rate ratio of the number of product units per week that will be required in the next thirty days to the average number of completed product units per week in the last thirty days. Official notice is taken that it would have been obvious to one of ordinary skill in the art at the time of the invention to set time periods to examine data trends. It is well known in the art of examining trends of data that one would set forth time frames wherein data from specific time periods is examined to compare to current data and also used to perform forecasting calculations. For example it is common to examine data on a monthly basis and also to forecast ahead to the current month. One would compare today's production, for example, to production rates the previous month before. The examination of data trends at specific time periods gives the user a better comparison thereby making the evaluation system more efficient.

As per **claim 15**, Page et al teaches setting control points corresponding to process milestones for product units from product order to product delivery and points in between (column 13, lines 29-44 – trackpoints are set up to monitor items delivered and a warning is generated if the number received falls short of expectation); monitoring and maintaining the order fulfillment process at each of the control points according to (1) a cumulative product unit

Art Unit: 3623

demand versus an actual number of cumulative product unit completions (fig 4 shows the summary of the trackpoint monitoring orders to a contractor showing status (on schedule, behind, etc.) along with amount orders versus amount completed), (2) a delivery variance for individual product units based on product unit delivery timing (column 13, lines 29-44 – trackpoints are set up to monitor items delivered and a warning is generated if the number received falls short of expectation); but does not explicitly teach monitoring and maintaining the order fulfillment process at each of the control points according to (3) line rate analyses based on product units per week. Page et al does teach evaluating the number produced per day and also maintaining a history to examine trends. Official notice is taken that it would have been obvious to one of ordinary skill in the art at the time of the invention to set time periods to examine data trends. It is well known in the art of examining trends of data that one would set forth time frames wherein data from specific time periods is examined to compare to current data. For example it is common to examine data on a monthly basis and also to forecast ahead to the current month. One would compare today's production, for example, to production rates the previous month before. The examination of data trends at specific time periods gives the user a better comparison thereby making the evaluation system more efficient.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wojcik et al, US 5,666,493 – system for managing customer orders and method of implementation

Art Unit: 3623

Cipelletti et al – US 5,673,194 – recording system for a production line

Chapman et al – US 5,321,605 – process flow information system

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnna R Stimpak whose telephone number is 703-305-4566.

The examiner can normally be reached on M-F 8am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS  
9/23/04

  
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